

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF STUDENT A. DOE

Interim Order

Held: Request for interim order seeking to extend transition period for special-needs student's newly-appointed one-on-one assistant is denied.

January 29, 2008

Introduction

This request for an interim order seeks to extend the transition period for student Doe's newly-appointed one-on-one aide.¹

Background

Student Doe is a 15-year-old middle-school student. He has multiple disabilities, including mild retardation, post-traumatic stress, sensory processing disorder, attention deficit/hyperactivity, attachment disorder, and oppositional defiance. Doe's school enrollment in September 2007 followed a hospitalization for mental health reasons.

Doe's individualized education program (IEP) states that he "needs to manage his targeted behaviors of tantrum and inappropriate verbalizations -- a time out procedure involving withdrawal of attention or movement to an alternate location may be used during incidents that are disruptive to the class." [Joint Exhibit 1]. The IEP further notes that Doe "needs to work on developing self-control strategies including anger management and relaxation . . . [and that he] needs a structured setting with clear boundaries, expectations, and consequences." [Ibid.]. Doe's IEP services include consultation with a behavioral specialist and a "one-on-one assistant trained in behavior techniques." [Ibid.].

Doe receives services from a human-service agency that assists individuals with developmental disabilities. Those services included an aide for Doe. The aide assisted Doe at home and, until the school district filled the position with a permanent hire, on the bus and at school. The agency aide is a male.

Clinical consultation notes introduced at the hearing documented Doe's aggressive and escalating behaviors in the classroom and methods to respond to those behaviors.² The evidence shows that Doe's problem behaviors typically begin with agitation and proceed to verbal abuse (yelling, swearing, name-calling, threats). If Doe is not redirected, given options or removed from a situation, he will become physically aggressive. The agency aide has had to restrain Doe, who is approximately 5 feet, 7 inches, 165 pounds, and strong.³

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. Hearings were held on January 16 and 22, 2008.

² The notes were compiled by the behavioral consultant, an employee of the same human-service agency, during weekly staff meetings to monitor Doe's progress, assess his needs and develop appropriate interventions.

³ Not all of Doe's behavior is predictable, however. In October 2007, while his assistant was at lunch, Doe became upset and suddenly placed a bear hug on his teacher. In the course of separating Doe from his teacher, the teacher and an aide sustained bruises.

The school district posted Doe's one-on-one assistant position in mid-September, one week before the teacher assistant job fair. Required qualifications for the position included non-violent crisis intervention training developed by the Crisis Prevention Institute (CPI), experience with behavioral de-escalation techniques, experience with behaviorally and emotionally disabled special-needs students, and the state-mandated teacher-assistant training program. The job fair did not yield any applications for the position. A subsequent newspaper advertisement produced three applicants, all female. The applicant that was hired is CPI-trained and has worked in the district with behaviorally and emotionally disabled students. District officials testified that the new assistant has a calm demeanor and is not threatened by boys' aggressive behaviors. At some point, Doe's aide from the agency expressed interest in the position, but he was not considered.⁴

A 5-week transition period was devised to replace the agency aide with the newly-hired assistant. The transition period provided an opportunity for the new assistant to shadow the agency aide and develop a rapport with Doe. The agency aide ceased working with Doe in school on December 21, 2007.

Staff at the school testified that a crisis protocol, based on a team intervention approach, has been developed for Doe. The protocol relies on increased observation of Doe and more effective communication among staff.⁵ De-escalation of aggressive behavior and the application of restraints are handled on a team basis, not individually by the one-on-one assistant.

The new assistant does not ride the bus with Doe. Further, it is not clear how Doe's bathroom visits are proposed to be handled.

Petitioner has also requested a special-education due process hearing with regard to the change in Doe's one-to-one assistant.

Positions of the Parties

Petitioner contends that the teacher-assistant transition period needs to be extended until school staff fully understands Doe's clinical history and diagnosis. Doe knows and trusts his agency aide. Safety issues will arise, particularly in light of Doe's attachment disorder, if the agency aide is totally removed from the school setting at this time. The

⁴ The aide testified that he has not completed the statutorily-required training program.

⁵ Staff is using walkie-talkies as part of this effort.

new assistant is not familiar enough with Doe's complicated diagnosis nor is she experienced in restraining students. A reactive approach to Doe's behavior will not prevent aggressive physical incidents, and Doe is capable of taking the new assistant's walkie-talkie and disrupting the staff's communication system.

The School Committee contends that the Commissioner's authority to enter "stay-put" orders pending due process hearings does not apply to the location and identity of service providers, and that Petitioner has not met its burden to prove that Doe is unsafe with his new assistant. The Committee argues that the job qualifications for the position reflect Doe's diagnosis, that the new assistant has the requisite training and qualifications, that she is building a rapport with Doe, and that the team approach is an effective and safe way to deal with Doe's problem behaviors.

Discussion

In In Re: John C.L. Doe, we stated that

For a child with disabilities who is eligible for special education and related services, interim order authority can be utilized to maintain a 'status quo' placement pending resolution of a dispute between parents and a school district as to what constitutes an appropriate placement. . . . Although 'the state' does have the discretion to alter a status quo placement at the request of the parents [footnote omitted] we have consistently ruled that the exercise of such discretion should not short-circuit the due process procedures established by Congress unless there is a clear need to do so to protect the rights of the student [citation omitted]. The Commissioner of Education has consistently declined the invitation to create or change placements, absent extraordinary circumstances [citations omitted].⁶

Health and safety issues were raised in the John C.L. Doe case. We concluded that the evidence presented by the parents in that case did not prove that the student's health or safety was "in jeopardy."⁷ We reach the same conclusion here.

The School Committee correctly points out that, ordinarily, a school district does not alter a placement when it changes the specific person providing an educational service to a special-needs student. Of course, the district must not endanger a student's health or safety when making personnel assignments. Under John C.L. Doe, a "clear need" to

⁶ Decision of October 21, 1997, p. 5.

⁷ Ibid., p. 6.

protect the student must be shown before we will reverse the status quo prior to the due process hearing. Petitioner in this case is understandably concerned for the well-being of her son. Given her son's recent hospitalization, we realize that these are serious concerns. We believe that the school district is of the same mind. The district has shown a great deal of collaboration, planning, and monitoring in this matter. It has taken steps to protect Doe, students, and staff during the new assistant's hiring and assignment to duty. Petitioner feels that these steps are not adequate, and we recognize that the expedited nature of interim-order proceedings often limits the type of presentation that can be made at the hearing. Petitioner was not able to present an expert witness. She will, however, have the opportunity to make an expanded record at the due process hearing.

While we conclude that Petitioner did not prove that there is a "clear need" to extend the transition period for the new one-on-one assistant, we find that the district needs to review two specific components of its protocol for Doe. First, because Doe's aide no longer rides the bus, the district must arrange to have Doe's emotional state assessed every morning upon his arrival at school. Second, the district must develop a procedure to be followed when Doe needs to go to the bathroom.

With these two caveats, the request for an interim order is denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

January 29, 2008